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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1034

CHESTER STEWART AND BURL BOONE,
Appellants,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS, ET AL.
(NORTHWESTERN STEEL & WIRE COMPANY, ET AL.),
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

JURISDICTIONAL STATEMENT.

BERNARD KLEIMAN,
GILBERT A. CORNFIELD,
GILBERT FELDMAN,
JASON GESMER,
ALTON SHARPE,
Ten South LaSalle Street,
Chicago, Illinois 60603,
Counsel for Appellants.

THE GUNTHROP-WARREN PRINTING COMPANY, CHICAGO 60

INDEX.

	PAGE
Judgments of the Supreme Court of Illinois	1
Jurisdiction	2
Question Presented	2
Statutes Involved	3
Statement	3
Substantial Question	4
Appendix: A & A-1—Judgments Below	7, 9
B—Statutes	11
C & C-1—Appellee's Motion to Dismiss, Appellants' Answer to Motion	12, 14

CITATIONS.

Cases.

Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282	2
Largent v. Texas, 318 U. S. 418	2
Lawrence v. State Tax Commission, 286 U. S. 276	2

IN THE

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OCTOBER TERM, 1966.

No. .....

CHESTER STEWART AND BURL BOONE,
Appellants,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS, ET AL.
(NORTHWESTERN STEEL & WIRE COMPANY, ET AL.),
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the Supreme Court of the State of Illinois, entered on September 16, 1966, dismissing Appellants' appeals from the Circuit Court of Whiteside County, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The final judgment of the Supreme Court of the State of Illinois in these cases was not reported, the Court failing to issue an opinion. A copy of the final judgments are attached hereto as Appendix A and A-1.

JURISDICTION.

These cases involve actions which arose under both the Illinois Workmen's Compensation Act and the Illinois Workmen's Occupational Diseases Act. Direct appeals from the decision of the Circuit Court of Whiteside County affirming the decision of the Industrial Commission of Illinois were taken to the Supreme Court of the State of Illinois pursuant to the provisions of Rule 28-1A(e) of that Court, Ill. Rev. Stat., chapter 110, #101.28—1A(e) (1963). The final order of the Circuit Court of Whiteside County was entered on August 9, 1965, and Notice of Appeal was filed in that Court October 6, 1965. The Supreme Court of the State of Illinois sustained Appellees' Motion to Dismiss Appellants' Appeal on September 16, 1966, and Notice of Appeal was filed in that Court on December 9, 1966. The jurisdiction of the Supreme Court to review this decision is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Largent* v. *Texas*, 318 U. S. 418; *Lawrence* v. *State Tax Commission*, 286 U. S. 276; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282.

QUESTION PRESENTED.

Whether the application of Section 19(F)(2) of the Illinois Workmen's Compensation Act, and Section 19(f)(2) of the Illinois Workmen's Occupational Diseases Act, as amended in 1965, such 1965 Amendments effectively curtailing the time for filing a Notice of Appeal from the Circuit Court of Whiteside County, Illinois, to the Supreme Court of Illinois from 60 days to 30 days, without first providing publication or other reasonable or adequate notice of the reduction of the filing period, and without pro-

viding a saving clause, violates the 14th Amendment of the Constitution of the United States?

STATUTES INVOLVED.

Section 19(f)(2) of the Illinois Workmen's Compensation Act, and Section 19(F)(2) of the Illinois Workmen's Occupational Diseases Act, as amended, are set forth in Appendix B hereto.

STATEMENT.

Chester Stewart filed a claim with the Illinois Industrial Commission under the Illinois Workmen's Compensation Act. Burl Boone also filed a claim with the Illinois Industrial Commission but under the Illinois Workmen's Occupational Diseases Act. The Illinois Industrial Commission found against both Stewart and Boone, in their respective cases, and they separately filed writs of certiorari to the Circuit Court of Whiteside County, Illinois. The Circuit Court affirmed both decisions of the Industrial Commission and direct appeals were then taken to the Supreme Court of Illinois.

The Notice of Appeal to the Supreme Court of Illinois, in each case, was filed 58 days after entry of the final order entered August 9, 1965 by the Circuit Court of Whiteside County, Illinois. Northwestern Steel & Wire Company, one of the Appellees herein, filed a Motion to Dismiss for Lack of Jurisdiction with the Supreme Court of Illinois on January 20, 1966, alleging that the Notice of Appeal in each case had been filed more than 30 days after entry of the said final order, and was therefore contrary to both the Illinois Workmen's Compensation Act and Illinois Workmen's Occupational Diseases Act, which had been amended effective July 1, 1965. The amendments shortened the time for filing notice of appeal from 60 days to 30 days

after the entry of a final order or judgment of a Circuit Court. The Workmen's Compensation Act. (Ill. Rev. Stat., Chap. 48, § 138.19(F)(2), as amended reads as follows:

> "Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon the filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court."

The Workmen's Occupational Diseases Act (Ill. Rev. Stat. 48, § 172.54(F)(2), as amended, reads the same as the amended section of the Workmen's Compensation Act as set forth immediately above.

In the *Stewart* case, Appellant filed an Answer and Affidavit to the Motion to Dismiss, while in the *Boone* case, Appellant incorporated his Answer and Affidavit to the Motion to Dismiss in his Brief and Argument, and said pleadings are set forth herein in Appendix C and C-1.

How the Federal Question Is Presented:

The Federal question sought to be reviewed was first raised by Appellant in his Answer and Affidavit to the Motion to Dismiss. The Supreme Court of the State of Illinois sustained the Appellees' Motions to Dismiss for Lack of Jurisdiction.

THE QUESTION IS SUBSTANTIAL.

It is submitted that the decision of the Illinois Supreme Court fails to recognize the importance and application of the 14th Amendment as applied to the facts of the instant case.

When a change is made in the substantive legal rights of an individual such individual is constitutionally entitled to reasonable notice of such change. A statutory amendment affecting the right of appeal and time in which an appeal may be filed is a substantial substantive legal right. Failure to give reasonable and adequate notice, either by publication or otherwise, before changing such a substantive right deprives an individual of due process of law, and the application of such amendment violates the 14th Amendment of the Constitution of the United States.

We believe that the question presented by this appeal is substantial and that it is of public importance.

Respectfully submitted,

BERNARD KLEIMAN,
GILBERT A. CORNFIELD,
GILBERT FELDMAN,
JASON GESMER,
ALTON SHARPE,
Ten South LaSalle Street,
Chicago, Illinois 60603,
Counsel for Appellant.

APPENDIX A.

UNITED STATES OF AMERICA.

State of Illinois, } ss.
Supreme Court. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of September in the year of our Lord, one thousand nine hundred and sixty-six, within and for the State of Illinois.

Present: Ray I. Klingbiel, Chief Justice
Justice Walter V. Schaefer
Justice Byron O. House
Justice Robert C. Underwood
Justice Harry B. Hershey
Justice Roy J. Solfisburg, Jr.
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 16th day of September 1966 the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Chester Stewart, *Appellant,* vs. Industrial Commission of Illinois, et al., Northwestern Steel & Wire Company and Lumbermen's Mutual Casualty Company, *Appellees.*	Appeal from Circuit Court, Whiteside County 64 L 164.

No. 39706

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of Said Court this 27th day of September, 1966.

/s/ Mrs. Earle Benjamin Searcy,

(Seal) *Clerk, Supreme Court of the State of Illinois.*

APPENDIX A-1.

UNITED STATES OF AMERICA.

State of Illinois, } ss.
Supreme Court. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of September in the year of our Lord, one thousand nine hundred and sixty-six, within and for the State of Illinois.

Present: Ray I. Klingbiel, Chief Justice
Justice Walter V. Schaefer
Justice Byron O. House
Justice Robert C. Underwood
Justice Harry B. Hershey
Justice Roy J. Solfisburg, Jr.
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 16th day of September 1966 the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 39707

Burl Boone, *Appellant,*
vs.
Industrial Commission of Illinois, et al.,
Northwestern Steel & Wire Company and Lumbermen's Mutual Casualty Company, *Appellees.*

Appeal from Circuit Court, Whiteside County 63 L 140.

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of Said Court this 27th day of September, 1966.

/s/ Mrs. Earle Benjamin Searcy,

(Seal) *Clerk, Supreme Court of the State of Illinois.*

APPENDIX B.

The Workmen's Compensation Act (Ill. Rev. Stat., Chap. 48, § 138.19 (F)(2), as amended reads as follows:

> "Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon the filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court."

The Workmen's Occupational Diseases Act (Ill. Rev. Stat. 48, § 172.54 (F)(2)), as amended, reads the same as the amended section of the Workmen's Compensation Act as set forth immediately above.

APPENDIX C.

No. 39706.

IN THE SUPREME COURT OF ILLINOIS.

January Term, A. D. 1966.

CHESTER STEWART,
Petitioner-Appellant,
vs.
INDUSTRIAL COMMISSION OF ILLINOIS AND NORTHWESTERN STEEL & WIRE COMPANY AND LUMBERMEN'S MUTUAL CASUALTY COMPANY,
Respondents-Appellees.

Appeal from the Circuit Court of Whiteside County.

Honorable L. L. Winn Judge Presiding.

MOTION.

Now Come the respondents-appellees, Northwestern Steel & Wire Company and Lumbermen's Mutual Casualty Company, and move this Honorable Court for an order dismissing the within appeal for want of jurisdic on as the Notice of Appeal was filed more than 30 days after the entry of the Whiteside County Circuit Court order. In support of such motion, respondents-appellees set forth the following:

1. The Whiteside County Circuit Court entered an order on August 9, 1965 affirming the Industrial Commission decision.

2. The Notice of Appeal was filed by petitioner-appellant on October 6, 1965, 58 days after the Circuit Court order.

3. Effective July 1, 1965, the Legislature enacted the following statute:

> "Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon the filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for the filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court." Ill. Rev. Stat., Ch. 48 § 138.19 (f)(2).

Respectfully submitted,

DOUGLAS F. STEVENSON,
Attorney for Northwestern Steel & Wire Company and Lumbermen's Mutual Casualty Company.

STEVENSON, CONAGHAN, HACKBERT,
ROOKS & PITTS,
208 South LaSalle Street,
Chicago, Illinois 60604,
FRanklin 2-5600.

APPENDIX C-1.

No. 39706.

IN THE ILLINOIS SUPREME COURT.

January Term, A. D. 1966.

CHESTER STEWART,
Plaintiff-Appellant,
vs.
INDUSTRIAL COMMISSION OF ILLINOIS AND NORTHWESTERN STEEL & WIRE COMPANY AND LUMBERMEN'S MUTUAL CASUALTY COMPANY,
Defendants-Appellees.

Appeal from the Circuit Court of Whiteside County.

Honorable L. L. Winn, Judge Pesiding.

ANSWER IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND SUGGESTIONS TO THE COURT.

Now comes plaintiff-appellant Chester Stewart and moves this Honorable Court to deny the Motion of Northwestern Steel & Wire Company to dismiss the above-entitled cause and in support thereof states the following:

The Circuit Court of Whiteside County entered its Order affirming the Decision of the Industrial Commission on August 9, 1965. Appellant filed his Notice of Appeal with that Court on October 6, 1965, believing that he had 60 days from the date of said Order to take such action. This was because every publication, treatise and reference con-

taining the law relating to Supreme Court appeals so stated. Appellee moved to dismiss the appeal on or about January 23, 1966, alleging that an amendment became effective July 1, 1965 requiring notice of appeal to be filed within 30 days after entry of the order of the Court.

Appellant urges this Court to deny Appellee's motion and asserts that if such motion were granted, under the facts and circumstances here present, Appellant would be denied his constitutional rights in that it would be violative of due process guarantees contained in both the United States Constitution and the Constitution of Illinois.

When a change is made in the substantive rights of an individual he is constitutionally entitled to reasonable notice of such a change. There can be no argument that an amendment affecting the right of appeal and time in which an appeal may be filed is a substantive right. Ordinarily, reasonable notice of a change in substantive rights is met by publication both of the newly enacted language and the date of its becoming effective. A failure to give reasonable and adequate notice before changing a substantive right deprives an individual of due process of law. In this instance, it was impossible for Appellant, any individual or any attorney to know of the change effective July 1, 1965 in Ill. Rev. Stat., Chap. 48, Section 138.19 (f)(2):

> "Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for the filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court."

In further support of Appellant's Answer in Opposition to Appellee's Motion to Dismiss and Suggestions to the Court, the affidavit of Jason Gesmer is attached hereto.

Respectfully submitted,

KLEIMAN, CORNFIELD & FELDMAN,
Attorney for Plaintiff-Appellant
Chester Stewart.

KLEIMAN, CORNFIELD & FELDMAN,
318 West Randolph Street,
Chicago, Illinois 60606,
RAndolph 6-2922.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

AFFIDAVIT.

JASON GESMER, being first duly sworn, upon oath deposes and says:

1. He is a partner in the law firm of Kleiman, Cornfield & Feldman and is the attorney charged with the handling of workmen's compensation claims for the firm.

2. Affiant says that on October 6, 1965, he filed a Notice of Appeal with the Circuit Court of Whiteside County, said appeal relating to a Decision of that Court entered August 9, 1965, affirming a Decision of the Industrial Commission.

3. Your affiant further says that when advised by counsel for Appellee shortly after October 6, 1965 that the Notice of Appeal had been filed more than 30 days after entry of the Order and contrary to the Statute effective July 1, 1965, he immediately began a comprehensive search of the law to verify the statement made by Appellee's counsel.

Your affiant did not know and did not have notice that a change had been made in the time allowed for the filing of a notice of appeal in workmen's compensation cases.

4. Affiant states that he consulted the Smith-Hurd Annotated Statute Advance Sheets, Daily Law Bulletin, check lists from the Illinois Bar Association, periodicals received in his office and the Chicago Bar Association Law Library and he was unable to locate any publication of or reference to the alleged statutory change as it might relate to the Workmen's Compensation Act. It was not until December of 1965 that the State of Illinois published the Workmen's Compensation Laws effective July 1, 1965, and made them available for the public as well as for attorneys.

5. Your affiant also participated in several sessions of the Industrial Commission Labor-Management Committee created to amend the Workmen's Compensation and Occupational Diseases Acts, said sessions being held in the Spring of 1965. In not one of the meetings he attended and in which he participated was there any mention made or discussion of the proposed change in the time allowed for filing a Notice of Appeal.

Further, Affiant sayeth not.

JASON GESMER.

Subscribed and Sworn to before me this 30th day of June, 1966.

NADINE DENNIS,
Notary Public.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

No. 1034

CHESTER STEWART, and BURL BOONE,
Plaintiffs-Appellants,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS, NORTHWESTERN STEEL & WIRE COMPANY, and LUMBERMEN'S MUTUAL CASUALTY COMPANY,
Defendants-Appellees.

On Appeal From The Supreme Court Of The State Of Illinois.

MOTION TO DISMISS

The appellees move to dismiss the appeals of Stewart and Boone for want of any federal question of substance.

JURISDICTION

This Court's jurisdiction has been invoked under 28 U.S.C. §1257(2), in both the *Stewart* and *Boone* cases.*

The supposed federal question of substance arises from the following circumstances. On July 1, 1965, in cases arising under the Illinois Workmen's Compensation Act and under the Illinois Workmen's Occupational Diseases Act, the statutory appeal period—which "shall be jurisdictional and shall not be subject to any extension" (Ill. Rev. Stat., ch. 48, §§ 138.19 (f) (2), 172.54 (f) (2); quoted in J.S. App. B)—was shortened for appeals from orders of the state circuit courts reviewing decisions of the Illinois Industrial Commission. The appeal period was shortened from 60 days to 30 days, by Acts which were passed by the Illinois General Assembly in June, 1965, were approved by the Governor on June 30, 1965, and became effective July 1, 1965. (1965 Ill. Session Laws, 1128, 1149.)

On August 9, 1965, the Circuit Court of Whiteside County, Illinois, in both the *Stewart* and *Boone* cases found "that the decision of the Industrial Commission is supported by evidence and is so affirmed." (Stewart R. 2; Boone R. 2.) Fifty-eight days later, on October 6, 1965, Stewart and Boone appealed to the Supreme Court

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* The two cases—Stewart's arising under the Illinois Workmen's Compensation Act, and Boone's arising under the Illinois Workmen's Occupational Diseases Act—were handled separately below before the arbitrator of the Industrial Commission of Illinois, the full Industrial Commission, the Circuit Court of Whiteside County, and the Supreme Court of Illinois. However, the cases now present the same issue for this Court's consideration, and they have been consolidated by the Clerk as No. 1034.

of Illinois. (Stewart R. 3; Boone R. 3.) The appellees filed motions to dismiss the appeals "for want of jurisdiction as the Notice of Appeal was filed more than 30 days after the entry of the Whiteside County Circuit Court order." (Stewart R. 6; Boone R. 6.) After receiving briefs and hearing oral argument on behalf of the appellants, the Supreme Court of Illinois dismissed the appeals by *per curiam* orders. (Stewart R. 20; Boone R. 12.) The appeals to this Court followed.

There is no suggestion of any irregularity in the promulgation of the legislation which shortened the time for appeal. The legislation was enacted in the same manner as other Illinois legislation, and published in the same way other acts are published. In Illinois pending bills, the legislative journals and an official weekly bill digest are printed, and copies may be obtained. (Ill. Const., Art. IV, §§ 10, 13; Cohn, *The Process of Legislation,* 1963 Ill. L. Forum, 27, 30, 35-36.) Counsel for the appellants had knowledge that legislation was passed in June 1965 amending the Workmen's Compensation and Occupational Diseases Acts, but did not learn of the amendment to the appeal provisions until the appeal period had run. (See Argument, *infra.*)

On this record, we submit, the appellants' lack of knowledge of the contents of the bills shortening the appeal period raises no substantial question of due process. Moreover, in the state court, the appellants raised their claim as a claim of *denial* of due process. (Stewart R. 12; Boone R. 11:27-28.) Such a claim should be pursued by certiorari under 28 U.S.C. § 1257(3), and not by appeal. (E.g., *Hanson* v. *Denckla,* 357 U.S. 235, 244.) Any supposed denial of due process is a matter to be considered under the standards applicable to certiorari. (E.g., Rule 19.)

QUESTION PRESENTED

Were the appellants denied due process by a legislative reduction in the appeal period for Illinois Workmen's Compensation and Occupational Disease Cases, under the circumstances presented here,

—where the reduction in appeal period was made prior to the commencement of appellants' time for appeal,

—where the legislation was promulgated in the normal course and printed copies of the amendatory bills were obtainable,

—and where appellants' counsel knew of the amendatory legislation but did not learn that its contents included a change in the appeal period from 60 to 30 days?

THE QUESTION IS WITHOUT SUBSTANCE

These appeals are here on the contention that Boone and Stewart, or their counsel, did not have a reasonable chance to know that their appeal period in the Illinois courts had been shortened from 60 to 30 days. This contention is without substance for several reasons.

1. Appellants' counsel admittedly knew that legislation had been passed in June 1965 amending the Illinois Workmen's Compensation and Occupational Diseases Acts. (Stewart R. 15; Boone R. 11:32.) However, counsel did not know the amendatory bills included provisions shortening the time for appeal. The claim presented, therefore, is simply a claim that appellants' counsel did not know or learn of all the contents of the amendatory bills, although he knew such bills had been enacted in June 1965, before the time for appeal expired on September 8, 1965.

2. It is admitted that appellants' counsel actually had a role in the preparation of the legislation in question.

The record shows (Stewart R. 15; Boone R. 11:32) that counsel "participated in several sessions of the Industrial Commission Labor-Management Committee created to amend the Workmen's Compensation and Occupational Diseases Acts." This Labor-Management Committee was the group that negotiated the agreed bills which, among other things, amended the Compensation and Occupational Diseases Acts so as to provide for a 30 day appeal period. Participants in the Committee's negotiations had access to drafts of the agreed bills.

3. The contents of the amendatory bills were also available through normal channels of legislative information. In Illinois bills are printed. All actions at each stage of passage are published in the journals of the Legislature, which are printed as well. An official bill digest is also printed, weekly. (Ill. Const., Art. IV, §§10, 13; Cohn, *The Process of Legislation*, 1963 Ill. L. Forum 27, 30, 35-36.) The printed bills, journals and digest are available. Copies can be obtained from the clerical staffs of the Illinois House and Senate. From the standpoint of official publication and availability of legislative enactments, the Illinois system is similar to that of the United States Congress.

4. Aside from examining the contents of the amendatory legislation, news of the change in appeal period was available from other sources. The official bill digest, printed weekly, described the legislation in question (S.B. 1267 and S.B. 1268) very briefly, but did state, "Revises method of appeal." (See Appendix B, *infra*.) News of the change to a 30 day appeal period also was widely circulated to Illinois lawyers well before September 8, 1965, when Boone's and Stewart's notices of appeal were due.

The Illinois State Bar Association alerted members of the bar to the amendment, in the Bar Association's civil practice and procedure newsletter, *Trial Briefs*, for July-August, 1965. (*Trial Briefs*, vol. XI, nos. 1-2.) This bulletin is reprinted verbatim in Appendix A, *infra*.

5. In view of these circumstances, we submit that the appellants had a reasonable opportunity to learn of the change in appeal period. The sources of information were open, and 70 days elapsed between the approval of the amendatory legislation and the due date for Boone's and Stewart's appeals. The Court should not create a doctrine allowing jurisdictional requirements to be avoided by litigants or lawyers who are unaware of those requirements. "Due process" does not permit unawareness of legal requirements. Such a doctrine would undermine jurisdictional requirements, procedural rules and even substantive duties. Much harsher state procedural requirements than the one involved here have been held to present no federal due process question of substance. For example, a provision for *no* judicial review or appeal from an Industrial Commission's decision in occupational disease cases was held not to present a substantial federal question in *Ohio ex rel. Jonak* v. *White*, 136 Ohio St. 213, 24 N.E. 2d 826, *appeal dismissed*, 310 U.S. 609 (1940).

CONCLUSION

We submit that this appeal presents no federal question of substance. The appeal should be dismissed and, treating the appeal as an alternative prayer for certiorari, certiorari should be denied.

Respectfully submitted,

HARLAN L. HACKBERT,
DOUGLAS F. STEVENSON,
JEREMIAH MARSH,
208 South LaSalle Street
Chicago, Illinois 60604
Counsel for Defendants-Appellees.

HACKBERT, ROOKS, PITTS,
FULLAGAR & POUST
Of Counsel.

APPENDIX A

Excerpts from TRIAL BRIEFS:

(published by the Illinois State Bar Association)

Vol XI Nos. 1-2

July-August 1965

NEW LEGISLATION AFFECTING CIVIL PRACTICE

The 74th General Assembly enacted a number of bills which affect civil practice and procedure, as follows:

Time for Filing Notice of Appeal in Civil Cases Reduced to 30 Days. Section 76 of the Civil Practice Act was amended to provide that notice of appeal must be filed within *30 days* after entry of the judgment appealed from. This provision, which takes effect on January 1, 1966, reduces the time from 60 days. (H.B. 948; approved by Governor on May 19, 1965.)

Time for Appealing in Workmen's Compensation Act and Occupational Diseases Act Cases Reduced to 30 days. Previously, orders of the Circuit Court in cases brought under the Illinois Workmen's Compensation and Occupational Diseases Acts were appealable through writ of error filed within 60 days from the date of the order. By amendments to those Acts, the writ of error procedure has been abolished and appeals will now be perfected by filing notice of appeal with the Clerk of the Circuit Court. The notice of appeal must be filed within *30 days* from the entry of the order appealed from. (S.B. 1267 and 1268.) Approved by Governor and effective June 30, 1965.

APPENDIX B

Final Legislative Synopsis and Digest of the 74th General Assembly of the State of Illinois

(Action on all Bills and Resolutions Received through June 30, 1965)

SB-1267 COLLINS, SPRAGUE, McGLOON, ARRINGTON, DIXON, McCARTHY, LAUGHLIN, COULSON, PETERSON, DOUGHERTY, CRONIN, ROSANDER, HART, LARSON, HATCH, CARPENTIER, TRAYNOR, PETERS, FINLEY, GOTTSCHALK, KINNALLY, GILBERT AND CHERRY

(C48 par 172.42, 172.43, 172.54 2 IRS 54)

Amends Workmen's Occupational Disease Act, Makes same changes corresponding to changes in the Workmen's Compensation Act (SB-1268). Increases treatment of silicosis from 6 months to 2 years. Revises method of appeal. Provides credit to employer for benefits paid.

June 1. Introduced. First reading. Without reference.

June 2. Second reading.

June 8. Recalled to second reading. Amended.

June 10. Third reading. Passed.

June 11. House.

June 14. First reading. Without reference.

June 17. Second reading.

June 28. Third reading. Passed.

June 30. Approved.

SB-1268 COLLINS, SPRAGUE, McGLOON, ARRINGTON, DIXON, McCARTHY, LAUGHLIN, COULSON, PETERSON, DOUGHERTY, CRONIN, ROSANDER, HART, LARSON, HATCH, CARPENTIER, TRAYNOR, PETERS, FINLEY, GOTTSCHALK, KINNALLY, GILBERT AND CHERRY

(C48 par 138.7, 138.8, 138.13, 138.14 and 138.19
2 IRS 34)

Amends the Workmen's Compensation Act. Increases weekly rates and distinguishes between temporary total disability and permanent partial disability. Raises the maximum death benefits and Burial Expense Allowance. Provides new coverage for certain fractures and the removal of specific organs. Increases salaries of the Chairman, Commissioners, Arbitrators and Secretary of the Commission. Revises method of appeal. Provides credit to employer for benefits paid.

June 1. Introduced. First reading. Without reference.

June 2. Second reading.

June 8. Recalled to second reading. Amended.

June 10. Third reading. Passed.

June 11. House.

June 14. First reading. Without reference.

June 17. Second reading.

June 28. Third reading. Passed.

June 30. Approved.

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FILED
MAY 4 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1034

CHESTER STEWART AND BURL BOONE,
Appellants,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS, ET AL.
(NORTHWESTERN STEEL & WIRE COMPANY, ET AL.),
Appellees.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BERNARD KLEIMAN,
GILBERT A. CORNFIELD,
GILBERT FELDMAN,
JASON GESMER,
ALTON SHARPE,
Ten South LaSalle Street,
Chicago, Illinois, 60603,
Counsel for Appellants.

THE CHURCHILL-BLEDSOE PRINTING COMPANY, CHICAGO 56

"We hear of Tyrants, and those cruel ones: but, whatever we may have felt, we have never heard of any tyrant in such sort cruel, as to punish men for disobedience to laws or orders which he had kept them from the knowledge of"

—5, Benetham, Works (1843).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1034.

CHESTER STEWART AND BURL BOONE,
Appellants,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS, ET AL.
(NORTHWESTERN STEEL & WIRE COMPANY, ET AL.),
Appellees.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

On April 17, 1967, this Court denied the Petition for Certiorari in this cause. For the reasons set forth below, we respectfully believe that a rehearing should be granted.

The Application of Section 19(f)(2) of the Illinois Workmen's Compensation Act, and Section 19(f)(2) of the Illinois Workmen's Occupational Diseases Act, as Amended in 1965, and as Applied to the Instant Factual Situation, Violated the 14th Amendment of the Constitution of the United States.

(1) There is an issue now presented by this case that far transcends the position of the two petitioners immediately involved, and which is infinitely disturbing in its im-

plication since it seriously concerns the public and lawyers alike and clearly demonstrates the importance and necessity of providing a reasonable means of distributing and publishing the texts of new laws and amendments to others.

(2) The volume of new laws, and amendments, have so increased that full, accurate, and prompt information of legislative activity is now quite important to the citizen and to his legal advisor. The present haphazard methods of publication disregard the public's interest in knowing what laws, amendments, and rules are in force at any particular time. Such disregard is clearly a denial of due process in that the citizens are constitutionally entitled to reasonable notice of changes of their substantive rights.

(3) Congress, in 1935, shortly after an embarrassing exposure in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, provided by statute for the establishment of a Federal Register, thus making possible an orderly and readily accessible body of laws, orders, regulations and amendments, as promulgated by the Federal government and its agencies. On the other hand, the State of Illinois does not provide a central registry for uniform filing of laws and amendments, and as a consequence thereof the public, affected by laws and amendments thereto is not able to ascertain applicable rules, regulations and amendments by going to one source. Had there been a uniform system for providing notice of changes in the law there would have been no "procedural uncertainties" nor a denial of constitutional rights as suffered by both *Stewart* and *Boone* in the instant case. We strongly feel that the public should not be penalized because of haphazard disbursement by the state of important information relative to new laws and/or amendments affecting its duties and rights.

Conclusion.

The Justices of this Court, heavily burdened with other important business, no doubt measured the importance of the question presented. However, the unique and unusual factual situation herein impels us to urge this Court to reconsider its denial of the petition for certiorari and upon such reconsideration to grant the petition for writ of certiorari. A clear judicial pronouncement—one way or the other—would be far better than to leave unclarified the results arrived at below.

Respectfully submitted,

Bernard Kleiman,
Gilbert A. Cornfield,
Gilbert Feldman,
Jason Gesmer,
Alton Sharpe,
Ten South LaSalle Street,
Chicago, Illinois, 60603,
Counsel for Petitioners.

Certificate of Counsel.

I hereby certify that the foregoing petition is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

.....

Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

STEWART ET AL. *v.* INDUSTRIAL COMM'N OF ILLINOIS ET AL.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

No. 1034. Decided April 17, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction.

Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.